

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

VICTORIA DORSEY

Plaintiff,

VS.

COMMONWEALTH LAND
TITLE INSURANCE COMPANY

Defendant.

CASE NO. 1:08-CV-1103

OPINION & ORDER
[Resolving Doc. [48](#).]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On October 2, 2008, Defendant Commonwealth Land Title Insurance Company (“Commonwealth”) moved this Court for an award of costs and attorney’s fees pursuant to Federal Rule of Civil Procedure 41(a)(2) or, in the alternative, pursuant to Federal Rule of Civil Procedure 37(d). [Doc. [43 at 1.](#)] With its motion, Commonwealth sought to recover a total of \$114,210.85 in attorney’s fees and \$6,348.63 in costs sustained in defending the action. [Doc. [43, Att. 1 at 1.](#)] Alternatively, Commonwealth sought a total of \$4,764.28 in fees and costs incurred as a result of Plaintiff Victoria Dorsey’s failure to attend her deposition. [*Id.* [at 2.](#)] Dorsey opposed the motion. [Doc. [45.](#)] Although she conceded that Commonwealth should recover the attorney’s fees and costs arising out of Dorsey’s failure to attend her deposition, Dorsey argued that Commonwealth should not be able to recoup the attorney’s fees and costs it expended in defending the action because it was dismissed with prejudice. [*Id.* [at 3.](#)] Defendant Commonwealth replied to the opposition, [Doc. [46.](#)], and Plaintiff Dorsey filed a sur-reply. [Doc. [47.](#)]

On October 7, 2008, this Court referred the motion to Magistrate Judge Nancy A.

Case No. 1:08-CV-01103-JG
Gwin, J.

Vecchiarelli for a Report and Recommendation. [Doc. [44](#).] On November 6, 2008, Magistrate Judge Vecchiarelli issued a Report and Recommendation that recommended the Court grant in part Defendant Commonwealth's motion for an award of attorney's fees and costs. [Doc. [48](#).] The Magistrate Judge found that the award of attorney's fees and costs under Federal Rule of Civil Procedure 41(a)(2) would not be appropriate because (1) courts typically do not award fees and costs under Rule 41(a)(2) when a plaintiff moves to voluntarily dismiss the case with prejudice, as was true in this case, and (2) the situation at hand did not justify the granting of costs and fees because the Plaintiff had not repeatedly brought claims and then dismissed them with prejudice, thereby inflicting significant costs on the opposing party and the courts, and no class was certified in this case. [*Id.* at [3](#).] Because Plaintiff Dorsey conceded that she lacked substantial justification for failing to appear at her deposition, agreed to pay the actual costs incurred by Defendant Commonwealth as a result of this failure to appear, and did not dispute the amount of costs and fees requested by the Defendant, the Magistrate Judge recommended a total recovery to the Defendant of \$4,764.28. [*Id.* at [5](#).] The parties have not objected. The Court **ADOPTS** Magistrate Judge Vecchiarelli's Report and Recommendation.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(c\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. [*Id.*] Failure to object within this time waives a party's right to appeal the magistrate judge's recommendation. [FED. R. CIV. P. 72\(a\)](#); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate's report without review. *See Thomas*, 474 U.S. at [149](#). Moreover, having

Case No. 1:08-CV-01103-JG
Gwin, J.

conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Vecchiarelli's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **GRANTS** in part Defendant Commonwealth's motion for an award of attorney's fees and costs, [Doc. [43.](#)], as outlined in the Report and Recommendation [Doc. [48.](#)]

IT IS SO ORDERED.

Dated: November 24, 2008

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE